



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1360/2016

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

MERITON PROPERTY SERVICES PTY LTD (ACN 115 511 281)

Respondent

ORDER

JUDGE: JUSTICE MOSHINSKY

DATE OF ORDER: 22 February 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

- 1 By 4.00 pm on 1 March 2017, the respondent is to make discovery of documents in the categories of documents set out in the Schedule to this order to the extent that the respondent has not already produced them in response to the notice issued by the applicant under s 155(1)(b) of the *Competition and Consumer Act 2010* (Cth) or otherwise provided them to the applicant. For the purposes of this order, the respondent is to discover documents of which, after a reasonable search, the respondent is aware. For the purposes of this order, in making a reasonable search, the respondent may take into account the matters referred to in sub-paragraphs (a) to (e) of rule 20.14(3) of the *Federal Court Rules 2011*.
- 2 The Orders made on 9 December 2016 be varied as follows:
 - a. The date in paragraph 4 be changed to 10 March 2017;
 - b. The date in paragraph 5 be changed to 24 April 2017; and
 - c. The date in paragraph 6 be changed to 12 May 2017.
- 3 Liberty to apply.
- 4 Costs reserved.

Date that entry is stamped: 22 February 2017


Registrar



Schedule

This Schedule adopts the defined terms used in the Concise Statement.

- 1 All documents recording communications between the Respondent and TripAdvisor regarding the:
 - a. Respondent joining TripAdvisor;
 - b. Respondent's decision to use the Review Express service; or
 - c. use, or terms of use, of Review Express.

- 2 All documents created, sent or received (during the period from the date when the Respondent began to use Review Express to the date when the Applicant wrote to the Respondent complaining about its conduct) by:
 - a. Carol Nazha (or person/s employed in Ms Nazha's position before Ms Nazha commenced employment with the respondent);
 - b. Meriton's National Manager or General Manager of the serviced apartments business; or
 - c. Meriton's hotel managers of the properties identified in the Concise Statement,
 - d. [omitted]concerning:
 - e. [omitted];
 - f. the respondent using the Review Express service (including the reasons for the respondent's decision to use the Review Express service);
 - g. any training and/or instructions provided to hotel managers of the properties identified in the Concise Statement regarding the Review Express service;
 - h. [omitted and dealt with below];
 - i. reviews posted on the pages of the TripAdvisor website dedicated to Meriton properties (including the effect of such reviews on the Respondent's business) (for the avoidance of doubt this category is limited to internal Respondent communications concerning such reviews); or
 - j. the implementation of the masking practice (as described in paragraph 15 of the Concise Statement) (the **masking practice**).

- 3 One example of the template or draft wording of the Review Express automated emails sent by TripAdvisor to the Respondent's customers for each Meriton hotel. If there was more than one template or draft wording for a particular hotel, then one example of each such template or draft is to be provided.

- 4 One example of the electronic page on the TripAdvisor 'hub' under which Meriton provided TripAdvisor with the email addresses of its customers during the relevant period. If there was more than one version of the 'hub', then one example of each version is to be provided.



- 5 All documents created, sent or received by Carol Nazha (and/or the person/s employed in Ms Nazha's position before Ms Nazha commenced employment with the respondent), between 1 August 2013 and 31 March 2015 which refer to the masking practice, including the purpose of the masking practice and including all previous iterations of the Excel spreadsheet document titled 'Review Express.xlsx' which was attached to an email sent by Carol Nazha to Albert Chan on 23 October 2015 and is referred to in the Schedule to the Concise Statement and one copy of any spreadsheet of the same nature and type.

[Words in square brackets are for explanation purposes and should not be treated as forming part of this Schedule]